

Gaslin Industrial Park  
Cupania Circle  
Monterey Park, CA 91755-7406  
Attn: Review: NJ

Date: OCT 01 1996

Case Number:  
[REDACTED]

Person to Contact:  
[REDACTED]

Telephone Number:  
[REDACTED]

Response Due Date:

[REDACTED]  
[REDACTED]  
[REDACTED]  
Dear Applicant:

We have considered your application for exemption from Federal Income Tax as an organization described in Section 501(c)(3) of the Internal Revenue Code (IRC).

FACTS:

Your application states in part that your purpose is, "to improve the care and longevity of art by assisting various art disciplines in certification; initiating programs of public information, craft education and general research; establishing art industry standards and guidelines in terminology, practices, materials, and specifications; establishing and maintaining communication and cooperation with all other art-related organizations worldwide; providing assistance in all matters of art from conception to conservation".

Each of the activities conducted by your organization, thus far, have been funded by the concerned industry for each particular project. Your organization form project committee that are usually made up of a group of manufacturers, suppliers, distributors, wholesalers, retailers and concerned individuals who are involved in art. They are brought together to develop and finance projects of research, consensus terminology, standards and relevant information.

Your [REDACTED] booklet indicated your intention as an organization by emphasizing the following:

- a) [REDACTED] is a group of manufacturers, suppliers, distributors, wholesalers, retailers and concerned individuals, involved in [REDACTED], brought together in a [REDACTED] committee to develop and finance projects of research, consensus terminology, standards and relevant information.

[REDACTED] can help solve industry problems by creating a neutral meeting ground for discussions, by overseeing needed research, and

subsection (h), and which does not participate in, or intervene in (including the publishing or distributing of statements), a political campaign on behalf of (or in opposition to) a candidate for public office.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations (ITR) provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c) of the ITR defines the operational test. It states that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the ITR provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private purpose. To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

Revenue Ruling 74-116, 1974-1 CB 127 discussed a non-profit organization of computer users whose activities are designed to keep members informed of current scientific and technical data of special interest to them as users of the computer. This organization was not exempt under section 501(c)(3). The same principle holds true for section 501(c)(6) organizations, they would serve private interest rather than directing its activities to the improvement of business conditions.

Revenue Ruling 71-504, 1971-2 CB 231 exempts a medical society under section 501(c)(6) rather than section 501(c)(3) because the organization had more than an insubstantial amount of non 501(c)(3) activities.

Revenue Ruling 71-505, 1971-2 CB 232 exempts a bar association under section 501(c)(6) rather than section 501(c)(3) because the organization had more than an insubstantial amount of non 501(c)(3) activities.

In Better Business Bureau v. U.S., 326 U.S. 279 (1945) C.B. 375, the Supreme Court determined that while some of the activities of the organization under consideration were educational, a substantial purpose of the organization was to promote business, and thus the organization was not operating exclusively for educational purposes. The Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption, regardless of the number or importance of truly exempt purpose.

In Presbyterian & Reformed Publishing Co. v. C.I.R., 79 T.C. 1070 (1982), the Tax Court found that the manner in which the

organization conducted its activities revealed a nonexempt commercial purpose that was substantial in nature. In making this determination, the court noted that whether an organization satisfies the operational test is essentially a question of fact. The Court noted that where a nonexempt purpose is not an expressed goal of the organization, courts have nonetheless focused on the manner in which the organization conducts its activities, implicitly reasoning that an end can be inferred from the means chosen to attain it. If, for example, an organization's management decisions replicate those of commercial enterprises, it is fair to infer that at least one purpose of the organization is commercial.

See Church of Boston v. Commissioner, (1978) 71 T.C. 102; Colorado State Chiropractic Society, (1989) 93 T.C. 487; Best Lock Corporation, (1959) 31 T.C. 1217; St. Louis Science Fiction Limited v. Commissioner, T.C. Memo 1985-162 and Minnesota Kingsmen Chess Association Inc. v. Commissioner, T.C. Memo 1983-495. All of these court cases held that the presence of a single non-exempt purpose and substantial non 501(c)(3) activities results in loss of exemption despite the presence of other exempt purposes.

#### ANALYSIS AND CONCLUSION:

You cited RR 71-506 as meeting the requirements for exemption under section 501(c)(3) of the IRC as performing scientific research as your primary activity (60%). However, comparing your organization to the organization in RR 71-506, you do not meet many of the various aspect of the Revenue Ruling.

#### COMPARISON:

- 1) RR 71-506 - the Society is composed of members; you have no members (2 officers/directors).
- 2) RR 71-506 - the Society provides a facility for research and dissemination of scientific knowledge; you do not provide such a facility.
- 3) RR 71-506 - full membership in the Society is limited to persons who meet certain working experience, knowledge, and years; you have no such limitation because there are no members.
- 4) RR 71-506 - the Society's dominant activity is research which is carried on continuously by a full-time paid staff in its own laboratory; you do not have a full-time staff and your "research" is carried on by a committee of interested individuals and organizations from your related art community.
- 5) RR 71-506 - the Society has no financial interest in the scientific information it develops; each of your organization's projects is funded by a committee of interested individuals and organizations.

- 6) RR 71-506 - the Society does not concern itself with protecting the information assembled or who use it; you have stated that you want some degree of control over what is done with the information that is made available.
- 7) RR 71-506 - the Society makes no effort to promote their use (of information); your organization's primary purpose is to establishing art industry standards and guidelines in terminology, practices and maintaining communication and cooperation with all the art-related organizations worldwide.

Your organization's activities are directed to benefiting private interest organizations and/or individuals because the activities are funded by such interested organizations and individuals. You have not established that your organization is not organized or operated for the benefit of private interests or that the activities you engage in are exclusively 501(c)(3) activities. The primary activities are to improve and to promote the art community (industry) and any evidence of direct public benefit is secondary.

Accordingly, based on all the facts and circumstances, you are not "organized exclusively" for an exempt purpose pursuant to sections 1.501(c)(3)-1(d)(1)(ii) and 1.501(c)(3)-1(d)(1)(iii) of the ITR, it is concluded that your organization does not qualify for recognition of exemption under section 501(c)(3) or any other section of the IRC.

If you agree with this proposed determination, please sign and return the enclosed agreement, Form 6018, Consent to Proposed Adverse Action. Please note that the instructions for signing are on the reverse side of the form.

If you do not agree with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange for a hearing. The hearing may be held at the office of the Regional Director of Appeals, or if you request, at a mutually convenient District Office.

If we do not hear from you within 30 days from the date of this letter, and you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies and will then become our final determination. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of United States of the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

*Steven A. Jensen*  
District Director

Enclosures:  
Form 6018  
Publication 892